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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,181	10/30/2001	Loel Fenwick	FE4-006	9538
21567	7590	02/24/2005	EXAMINER	
WELLS ST. JOHN P.S. 601 W. FIRST AVENUE, SUITE 1300 SPOKANE, WA 99201			NASSER, ROBERT L	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/000,181	<b>Applicant(s)</b> FENWICK ET AL.	
	<b>Examiner</b> Robert L. Nasser	<b>Art Unit</b> 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 15-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The subject matter of claims 6-11, 22, and 23 lacks antecedent basis in the specification in that the opening of the pocket and the opaque material are not disclosed as being on opposite sides of the pocket. In figure 3, applicant only shows the opening and the opaque material on the same side of the pocket. Clarification is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, 8, 15, 16, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bloch 4747413. . Bloch shows an infant shirt or undershirt comprising a fabric shirt having a pocket 16 formed by a piece of cloth 17, where a sensor module 18 is retained in the pocket and is in direct contact with the skin of the patient through a hole (see column 3, line 57). The examiner notes that the materials used fro the shirt are “opaque” whether or not the sensor needs them to be.

Claims 6, 8, 15, 16, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Benstock 5184351. Benstock shows an shirt or undershirt comprising a fabric shirt having a pocket 20 formed by a piece of cloth, where a sensor module 21 is retained in the pocket and is in direct contact with the an internal monitoring device

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through a buttonhole. (see column 4, lines 25-38). The examiner notes that the materials used for the shirt are "opaque" whether or not the sensor needs them to be.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 9-11, 17, 18, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloch 4747413 in view of Pennington 5806096. In addition to the features discussed above, Bloch teaches that tab 17 forming the pocket securely hold the sensor against the armpit. Pennington further teaches an alternate method to hold an item under an infant's shirt securely against the body, by providing a band of stretch fabric that is wrapped around the torso of the child to hold the item securely against the body. Hence, it would have been obvious to replace tab 17 with a band of stretch fabric, as it is merely the substitution of one way to hold the device against the body for another. In this way, the pocket would be formed between the stretch fabric band that encircles the torso and the fabric shirt. With respect to claim 23, the examiner takes official notice that it is well known to provide a fastener on a shirt pocket.

Claims 1-5, 7, 9-11, 17, 18, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benstock 5184351 in view of Pennington 5806096. Pennington further teaches an alternate method to hold an invasive device in place to prevent dislodgement or removal, by providing a band of stretch fabric that is wrapped

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around the torso of the child to hold the item securely against the body. Hence, it would have been obvious to replace outer portion of the pocket a band of stretch fabric, to prevent movement of the internal device once placed. In this way, the pocket would be formed between the stretch fabric band that encircles the torso and the fabric shirt. With respect to claim 23, the examiner takes official notice that it is well known to provide a fastener on a shirt pocket.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jayaramen et al 6687523 show garments holding sensors against the body.

Applicant's arguments filed 11/1/2004 have been fully considered but they are moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (571) 272-4731. The examiner can normally be reached on Mon-Fri, variable hours.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert L. Nasser  
Primary Examiner  
Art Unit 3736

RLN  
February 22, 2005

  
ROBERT L. NASSER  
PRIMARY EXAMINER